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**IN THE
COURT OF APPEALS OF INDIANA**

IN THE MATTER OF THE GUARDIANSHIP OF)
T.W. and C.W., minors,)
and)
IN RE THE MARRIAGE OF)
JEREMY WIREMAN and DEENA WIREMAN.)

DANNY WIREMAN and JOYCE WIREMAN)

Appellants-Petitioners,)

vs.)

No. 37A03-0610-CV-506

DEENA KOPKA,)

Appellee-Respondent.)

APPEAL FROM THE JASPER SUPERIOR COURT
The Honorable J. Philip McGraw, Judge
Cause No. 37D01-0505-GU-170 and Cause No. 37D01-9903-DR-60

May 18, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAILEY, Judge

Case Summary

Appellants-Petitioners Danny and Joyce Wireman (“Grandparents”) appeal the trial court’s order denying their petition for visitation with their grandchildren and ordering them to pay the attorney’s fees for Appellant-Respondent Deena Kopka (“Mother”). We reverse and remand.

Issues

We address two of the three issues raised by the Grandparents:¹

- I. Whether the trial court issued sufficient findings and conclusions to support the denial of the petition for grandparent visitation; and
- II. Whether the trial court erred in ordering the Grandparents to pay Mother’s attorney’s fees.

Facts and Procedural History

Jeremy Wireman (“Father”) and Mother were married in 1996 and had two children, T.W. and C.W, during their marriage. In 1999, Father and Mother’s marriage was dissolved. The dissolution decree provided in part that Mother would have “care, control and custody” of T.W. and C.W. (the “Children”) while providing visitation rights to Father. Appellant’s Appendix at 22. The decree also provided that if Father was living out of state, the Grandparents could exercise Father’s visitation rights in addition to being entitled to grandparent visitation rights on Wednesday of every week.

Despite the arrangement provided in the dissolution decree, both the Grandparents and

¹ The Grandparents also raise the issue of whether the trial court erred in denying their petition for grandparent visitation, but we need not address this issue as we reverse and remand to the trial court to issue an order sufficiently supported by the required findings as set forth in McCune v. Frey, 783 N.E.2d 752 (Ind.

Mother filed various petitions in 2001-2002 regarding the Grandparents' visitation rights. In 2005, the Grandparents filed a verified petition for visitation rights, alleging that despite being previously granted visitation rights on Wednesdays and the ability to exercise Father's visitation rights under certain conditions, Mother was denying them any visitation.

On April 7, 2005, Mother and the Grandparents came to an agreement regarding visitation arrangements, which was submitted to and approved by the trial court. In a separate action filed a month later, the Grandparents filed a petition to appoint the Grandparents as guardians of the Children. In response on June 22, 2005, Mother filed a motion seeking to restrict the Grandparents' visitation rights, alleging that they were abusing their visitation privileges in an attempt to obtain custody of the Children. The two causes were consolidated, and the trial court appointed a Guardian-Ad-Litem ("GAL") to represent the Children.

In its July 6, 2006 order, the trial court denied the Grandparents' guardianship petition and petition for grandparent visitation, as well as ordering the Grandparents to pay for Mother's attorney's fees and the GAL fees. On July 31, 2006, the Grandparents filed a Motion to Correct Errors in response to which the trial court took no action.² Subsequently, this appeal ensued.

Ct. App. 2003).

² Pursuant to Ind. Trial Rule 53.3, the Grandparents' Motion to Correct Errors was deemed denied forty-five days after the motion was filed due to the trial court's inaction. The Grandparents timely filed their notice of appeal within the thirty days following the date their motion was deemed denied.

Discussion and Decision

The Grandparents challenge the trial court's order denying their petition seeking grandparent visitation, contending that the order was not supported by sufficient findings and conclusions.

We first note that Mother did not file an appellate brief for this appeal. A less stringent standard of review is applied with respect to demonstrating reversible error when an appellee fails to file a brief. McKinney v. McKinney, 820 N.E.2d 682, 685 (Ind. Ct. App. 2005). In this situation, a judgment may be reversed if the appellant demonstrates a prima facie case of error, an error at first sight, on first appearance, or on the face of it. Id. With this in mind, we turn to the Grandparents' argument that the trial court issued insufficient findings and conclusions regarding the denial of their petition for grandparent visitation.

I. Sufficient Findings and Conclusions

In its order on a petition for grandparent visitation, the trial court must set forth its findings and conclusions. Ind. Code § 31-17-5-6. These findings and conclusions must address: (1) the presumption that a fit parent acts in his or her child's best interests; (2) the special weight that must be given to a fit parent's decision to deny or limit visitation; (3) whether the grandparent has established that visitation is in the child's best interests; and (4) whether the parent has denied visitation or has simply limited visitation. In re Paternity of P.E.M., 818 N.E.2d 32, 37 (Ind. Ct. App. 2004). In McCune v. Frey, we noted that

[i]t is important for parties and the reviewing court to have a clear understanding of how and why the trial court made its decision. It is particularly imperative in a grandparent visitation case because of the tension between a parent's fundamental right to control the upbringing of his or her

child, and the fact that a child's best interests are "often served by developing and maintaining contact with his or her grandparents."

783 N.E.2d 752, 757 (Ind. Ct. App. 2003).

The trial court's findings and conclusions as to the petition for grandparent visitation read as follows:

As to the issue of grandparent visitation requested by the Paternal grandparents through the dissolution action in 37D01-9903-DR-060, the Court finds that there are certain criteria that must be complied with in a grandparent visitation situation, and that that criteria has not been fulfilled in this matter.

Further, the Court finds that there is a tension that exists between the paternal grandparents and the natural mother that makes mandatory visitation at this time impractical. The Court, however, recommends to the natural mother that she allow the children to visit the paternal grandparents and maintain a relationship. However, the Court will not require the same as an order of this Court because it is not in the best interest of the children to require mandatory grandparent visitation.

Appellant's Appendix at 18. Rather than specifically addressing the specific criteria, as required, the trial court summarily concludes that the petition fails. The trial court's findings are insufficient in that they lack findings addressing the four required topics.

The failure of a trial court to enter required findings is "a defect in form, or procedural irregularity, which is capable of being cured." Paternity of P.E.M., 818 N.E.2d at 37. As a result, the order is voidable, and the remedy on appeal is to remand to the trial court with instructions to enter an order containing the required findings. Id. We therefore remand for the trial court to enter the corresponding order specifically addressing the four required topics.

II. Attorney's Fees

The Grandparents also contend that the trial court did not have authority under Indiana

Code Section 31-17-7-1 to order them to pay Mother's attorney's fees. The decision to award attorney's fees and the amount of the award is reviewed for an abuse of discretion. Swartz v. Swartz, 720 N.E.2d 1219, 1223 (Ind. Ct. App. 1999). Indiana follows the American Rule, which ordinarily requires each party to pay their own attorney's fees. Id. Thus, attorney's fees are generally not recoverable from the opposing party as costs, damages, or otherwise, in the absence of an agreement between the parties, statutory authority, or rule to the contrary. Id.

Indiana Code Section 31-17-7-1, addressing costs and attorney's fees in custody and visitation disputes, provides:

The court periodically may order a party to pay a reasonable amount for the cost to the other party of maintaining or defending any proceeding under IC 31-17-2, IC 31-17-4, IC 31-17-6, or this chapter and for attorney's fees and mediation services, including amounts for legal services provided and costs incurred before the commencement of the proceedings or after entry of judgment.

The Grandparent Visitation Act, Indiana Code Chapter 31-17-5, is not included in the list, and therefore I.C. 31-17-7-1 does not provide authority to order a party to pay for the opposing party's attorney's fees in a petition for grandparent visitation.

The trial court's order for the payment of Mother's attorney's fees does not identify under what statute the costs were being ordered or that there was an agreement between the parties. Nor do we find that there is a statute applicable under these circumstances. We conclude that the trial court abused its discretion in ordering the Grandparents' to pay Mother's attorney's fees.

Reversed and remanded.

SHARPNACK, J., and MAY, J., concur.